

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 279

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO IDENTITY SECURITY; REQUIRING POLICE REPORTS;
PROVIDING FOR IDENTITY THEFT PASSPORTS; ALLOWING FOR REMOVAL OF
A FALSE IDENTITY IN CRIMINAL RECORDS; EXTENDING THE TIME LIMIT
FOR PROSECUTION OF CERTAIN CRIMES; CLARIFYING DEFINITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 29 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] IDENTITY THEFT REPORTS.--When a law
enforcement officer interviews an alleged identity theft
victim, the law enforcement officer shall make a written report
of the information provided by the victim and by witnesses on
appropriate forms provided by the attorney general. A copy of
the police report shall be filed with the office of the
attorney general."

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1 Section 2. Section 30-1-8 NMSA 1978 (being Laws 1963,
2 Chapter 303, Section 1-8, as amended) is amended to read:

3 "30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--
4 [~~No~~] A person shall not be prosecuted, tried or punished in any
5 court of this state unless the indictment is found or
6 information or complaint is filed [~~therefor~~] within the time as
7 provided:

8 A. for a second degree felony, within six years
9 from the time the crime was committed;

10 B. for a third or fourth degree felony, within five
11 years from the time the crime was committed;

12 C. for a misdemeanor, within two years from the
13 time the crime was committed;

14 D. for a petty misdemeanor, within one year from
15 the time the crime was committed;

16 E. for any crime against or violation of Section
17 51-1-38 NMSA 1978, within three years from the time the crime
18 was committed;

19 F. for a felony pursuant to [~~Sections~~] Section
20 7-1-71.3, 7-1-72 or 7-1-73 NMSA 1978 [~~or Section 4 of this 2005~~
21 ~~act~~], within five years from the time the crime was committed;
22 provided that for a series of crimes involving multiple filing
23 periods within one calendar year, the limitation shall begin to
24 run on December 31 of the year in which the crimes occurred;

25 G. for an identity theft crime pursuant to Section

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1 30-16-24.1 NMSA 1978, within five years from the time the crime
2 was discovered;

3 ~~[G.]~~ H. for any crime not contained in the Criminal
4 Code or where a limitation is not otherwise provided for,
5 within three years from the time the crime was committed; and

6 ~~[H.]~~ I. for a capital felony or a first degree
7 violent felony, no limitation period shall exist and
8 prosecution for these crimes may commence at any time after the
9 occurrence of the crime."

10 Section 3. Section 30-16-24.1 NMSA 1978 (being Laws 2001,
11 Chapter 138, Section 1, as amended) is amended to read:

12 "30-16-24.1. THEFT OF IDENTITY--OBTAINING IDENTITY BY
13 ELECTRONIC FRAUD.--

14 A. Theft of identity consists of willfully
15 obtaining, recording or transferring personal identifying
16 information of another person without the authorization or
17 consent of that person and with the intent to defraud that
18 person or another or with the intent to sell or distribute the
19 information to another for an illegal purpose.

20 B. Obtaining identity by electronic fraud consists
21 of knowingly and willfully soliciting, requesting or taking any
22 action by means of a fraudulent electronic communication with
23 intent to obtain the personal identifying information of
24 another.

25 C. As used in this section:

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1 (1) "fraudulent electronic communication"
2 means a communication by a person that is an electronic mail
3 message, web site or any other use of the internet that
4 contains fraudulent, false, fictitious or misleading
5 information that depicts or includes the name, logo, web site
6 address, email address, postal address, telephone number or any
7 other identifying information of a business, organization or
8 state agency, to which the person has no legitimate claim of
9 right; ~~[and]~~

10 (2) "personal identifying information" means
11 information that alone or in conjunction with other information
12 identifies a person, including the person's name, address,
13 telephone number, driver's license number, social security
14 number, date of birth, biometric data, place of employment,
15 mother's maiden name ~~[of the person's mother]~~, demand deposit
16 account number, checking or savings account number, credit card
17 or debit card number, personal identification number,
18 electronic identification code, automated or electronic
19 signature, passwords or any other numbers or information that
20 can be used to obtain access to a person's financial resources,
21 obtain identification, act as identification or obtain goods or
22 services; and

23 (3) "biometric data" means data, such as
24 finger, voice, retina or iris prints or deoxyribonucleic acid,
25 that capture, represent or enable the reproduction of unique

1 physical attributes of a person.

2 D. Whoever commits theft of identity is guilty of a
3 fourth degree felony.

4 E. Whoever commits obtaining identity by electronic
5 fraud is guilty of a fourth degree felony.

6 F. Prosecution pursuant to this section shall not
7 prevent prosecution pursuant to any other provision of the law
8 when the conduct also constitutes a violation of that other
9 provision.

10 G. In a prosecution brought pursuant to this
11 section, the theft of identity or obtaining identity by
12 electronic fraud shall be considered to have been committed in
13 the county:

14 (1) where the person whose identifying
15 information was appropriated, obtained or sought resided at the
16 time of the offense; or

17 (2) in which any part of the offense took
18 place, regardless of whether the defendant was ever actually
19 present in the county.

20 H. A person found guilty of theft of identity or of
21 obtaining identity by electronic fraud shall, in addition to
22 any other punishment, be ordered to make restitution for any
23 financial loss sustained by a person injured as the direct
24 result of the offense. In addition to out-of-pocket costs,
25 restitution may include payment for costs, including attorney

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1 fees, incurred by that person in clearing the person's credit
2 history [~~or~~], credit rating, criminal history or criminal
3 charges or costs incurred in connection with a [~~civil or~~
4 ~~administrative~~] legal proceeding to satisfy a debt, lien,
5 judgment or other obligation of that person arising as a result
6 of the offense.

7 I. The sentencing court shall issue written
8 findings of fact and may issue orders as are necessary to
9 correct [~~a public record~~] public records and errors in credit
10 reports and identifying information that [~~contains~~] contain
11 false information as a result of the theft of identity or of
12 obtaining identity by electronic fraud."

13 Section 4. [NEW MATERIAL] IDENTITY THEFT PASSPORT--
14 DATABASE.--

15 A. The attorney general, in cooperation with the
16 department of public safety and the motor vehicle division of
17 the taxation and revenue department, shall issue an identity
18 theft passport to a person who claims to be a victim of
19 identity theft pursuant to Section 30-16-24.1 NMSA 1978 and
20 who provides to the attorney general:

21 (1) a certified copy of a court order
22 obtained pursuant to Section 5 of this 2009 act or a full set
23 of fingerprints;

24 (2) a driver's license or other government-
25 issued identification or record; and

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1 (3) other information as required by the
2 attorney general.

3 B. An identity theft passport shall contain a
4 picture of the person to whom it was issued and other
5 information as the attorney general deems appropriate.

6 C. The attorney general may enter into a
7 memorandum of understanding with the motor vehicle division
8 of the taxation and revenue department for the development
9 and issuance of a secure form of identity theft passport.
10 When an identity theft passport is issued, the motor vehicle
11 division shall note on the person's driver record that an
12 identity theft passport has been issued.

13 D. An identify theft passport shall be accepted
14 as evidence of identity by law enforcement officers and
15 others who may challenge the person's identity.

16 E. The attorney general shall maintain a database
17 of identity theft victims who have reported to a law
18 enforcement agency or have been issued an identity theft
19 passport. The attorney general may provide access to the
20 database only to criminal justice agencies. For purposes of
21 identification and authentication, the attorney general may
22 allow access to specific information about a person who has
23 become a victim of identity theft to that person or to that
24 person's authorized representative.

25 F. The attorney general shall keep on file each

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1 application for an identity theft passport and each police
2 report of identity theft submitted by a law enforcement
3 agency.

4 G. The attorney general shall prepare and make
5 available to local law enforcement agencies and to the
6 general public an information packet that includes
7 information on how to prevent and stop identity theft.

8 Section 5. [NEW MATERIAL] EXPUNGEMENT FROM POLICE AND
9 COURT RECORDS.--

10 A. A person whose name or other identifying
11 information was used, without consent or authorization, by
12 another person who was charged, arrested or convicted of a
13 crime while using that person's name or identification may,
14 with notice to the prosecutor, file a petition in the
15 criminal action, if pending, or if the criminal action is not
16 pending, then in a court of competent jurisdiction,
17 requesting expungement of the petitioner's personal
18 identifying information from the record. If the court finds
19 that the petitioner did not commit the offense with which the
20 petitioner's identity has been associated, the court shall
21 expunge the petitioner's personal identifying information
22 from the record.

23 B. When a court finds that a petitioner did not
24 commit the offense with which the petitioner's identity has
25 been associated, the court shall order that the petitioner's

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1 name and other identifying information contained in the court
2 records be removed and the records labeled to show that, due
3 to identity theft, the information is not accurate and does
4 not reflect the perpetrator's true identity. The court may
5 also order expungement of the innocent party's arrest
6 information pursuant to Section 29-3-8.1 NMSA 1978.

7 Section 6. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2009.

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